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H – 78

International Court of Justice

H0078 - 0002

Official Transcript of the International Military Tribunal in the Matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 7 March 1946, 1000-1300, Lord Justice Lawrence presiding.

THE PRESIDENT: I call on Counsel for the Defendant von Papen.

(Dr. Egon Kubuschok, Counsel for the Defendant von Papen, and Sir David Maxwell-Fyfe, came to the lectern.)

SIR DAVID MAXWELL-FYFE: If the Tribunal approves, I shall indicate the views of the Prosecution on the witnesses requested by Dr. Kubuschok.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL-FYFE: The first witness is von Lersner, and there is no objection. This witness ic alled to cover among other things the period of the coming into power of the Hitler Government, which is one of the material elements in the case against von Papen.

If the Tribunal would consider the next three witnesses, there is a minor point: The witness von Tschirschky was, as I understand it, von Papen's private secretary from 1933 to February, 1935. That is, he covered the period of the rise to power of the Nazi Party. And he also covers some of the period in Austria.

The next witness, von Kageneck, is also a private secretary. He does not cover theperiod of the rise to power, but covers the whole Austrian period.

The next witness, Erbach, was the counsellor at the Embassy in Vienna. That is, he covers the period 1934 to 1938.

The Prosecution has always been reluctant to oppose the calling of secretaries who could assist the memory of the Defendant, but it did seem to us that the witness Tschirschky was cumulative both on the period of the rise to power and Austria, and that it would be sufficient to have interrogatories in that case. Therefore, the Prosecution, apart from that, would not object to von Kageneck and Erbach.

THE PRESIDENT: That is, interrogatories for 2 you suggest, and calling 3 and 4?

SIR DAVID MAXWELL-FYFE: Yes, My Lord, interrogatories, and calling of 3 and 4.

THE PRESIDENT: Yes?

H0078 - 0003

SIR DAVID MAXWELL-FYFE: And with regard to No. 5, the witness Kroll, the Prosecution submits that he is irrelevant. He is called as to the period when the Defendant was an ambassador in Turkey and he is alleged to be able to say that von Papen had no aggressive thoughts with regard to Russia. The Prosecution would submit that really von Papen is the person who can speak as to a matter like that, and the Prosecution have had no evidence as to any subversive activity of the Nazi Party in Turkey, which is the other point that this witness is said to speak to.

Then the next five witnesses -- 6, 7, 8, 9 and 10: The Tribunal granted interrogatories and so long as the matter is limited to interrogatories, the Prosecution will take no objection.

And No. 11, the Baroness de Nothomb: The Prosecution object to evidence as to acts of intercession on behalf of members of the Resistance Movement, and individual acts of that kind, in the submission of the Prosecution, are not really relevant to the matters before the Court.

With regard to an archbishop, Gröber, if the Tribunal would mind looking at No. 12, at the application, in the submission of the Prosecution the matters raised by the questions are not relevant. The first is, "Were the Concordat negotiations between Germany and the Holy See brought about by Defendant von Papen's own initiative?" The second question is, in short, "Did von Papen make efforts with Hitler about the Concordat?" Well, the Concordat was made, and what the Tribunal are really concerned with is the breaches of the Concordat, of which the Prosecution has given written evidence.

No. 2. under this witness: I am afraid that I don't understand that, and in its present form I submit that it is irrelevant, in addition to being vague. "Were the activities of the Defendant directed by his positive religious attitude also after the conclusion of the Concordat?"

Then the third question: "Was the conclusion of the Concordat, welcom ed by the German Episcopate?" I don't think that really helps.

And 4: "Did the Concordat give legal backing to the Church during the later religious struggles?" And, "Could the Church fall back on the Concordat to the end?"

The Concordat is there and speaks for itself, and as I say, the issue in this case is the breaches of the agreement, not its contents. So we object to No. 12.

H0078 - 0004

Number Thirteen, the witness von Beaulieu. That is very short, if the Tribunal would be good enough to look at it:

"I shall submit an affidavit of the witness which deals with the intervention of the Defendant as President of the Union Club on behalf of Jews."

The Prosecution submit that the intervention in a racing club on behalf of some Jewish members is not really a relevant matter, even on the Jewish issue.

Fourteen: The witness Josten. Dr. Kubuschok asks for the use of a statement which has been sent to the Tribunal. The Prosecution would prefer that to be in the form of an affidavit or interrogatory, if this is possible.

THE PRESIDENT: That is Fourteen, is it?

SIR DAVID MAXWELL-FYFE: Fourteen, My Lord, yes.

Then Fifteen is His Majesty, the King of Sweden. That is a new application and general in its scope. It is difficult to judge how much King Gustav could contribute, and, therefore, the Prosecution do not object to interrogatories.

THE PRESIDENT: Sir David, in Fourteen Dr. Kubuschok says that he requested the statement made by the witness to the legal department of the Military Government Headquarters, Dusseldorf, be furnished to him. Are you objecting to that being furnished to him?

SIR DAVID MAXWELL-FYFE: No, I thought that he had got it

DR. KUBUSCHOK: I got it this morning.

SIR DAVID MAXWELL-FYFE: Dr. Kubuschok says that he received it today, this morning.

THE PRESIDENT: Are you objecting to his offering it as evidence?

SIR DAVID MAXWELL-FYFE: No, I only say that we should prefer it in the form of an affidavit or interrogatory, if that can be done. I do not make any great objection.

DR. KUBUSCHOK: Witness Number One, Baron von Lersner. The Tribunal granted only an interrogatory at first. The Prosecutor has today agreed to have the witness called before this Tribunal. I also ask to have this witness questioned before thie Tribunal. I also ask to have this witness

H0078 - 0005

questioned before the Court. The witness was the President of the German Peace Delegation at Versailles. He is a very well known German diplomat, who was since 1932 a very close collaborator of the Defendant von Papen. A man like Lersner had, of course, a particularly good understanding for every policy of aggression. Therefore, it is very important to hear this collaborator of the Defendant von Papen and to let him tell us how he could observe the Defendant in his activities up to 1945. It is particularly important that Lersner, upon the suggestion of von Papen --

THE PRESIDENT: Dr. Kubuschok, Sir David agreed, I think with reference to Number One.

DR. KUBUSCHOK: Yes, sir, if the Tribunal also agrees.

The second witness, Tschirschky. Tschirschky was the private secretary of the Defendant from 1933 to 1935, the first private secretary during the time that the Defendant was Vice Chancellor of Germany

H0078-0006

and was himself a man who was persecuted by the Gestapo and had to go into exile in 1935, where he still is. He is a man who is informed thoroughly and can give thorough information about the external activity of the Defendant and his own attitude between 1933 and 1935.

I believe that, especially about the time at the beginning of 1933 we do not get a thorough picture if we do not hear this most intimate collaborator of the Defendant personally. The other witnesses concern mostly different times. Only in some cases do they overlap with the activity of this witness.

Number Five, Kroll --

THE PRESIDENT: Supposing that the Tribunal thought it right to grant you Number Two as an oral witness, would it not be possible to dispense with one of Three or Four and have interrogatories from one of them and call the other one? They deal with somewhat the same period.

DR. KUBUSCHOK: We need Three for the following reasons: Witness Number Three, Count Kageneck, was present when Hitler entrusted Papen with the Austrian mission. This is a very important point since the Prosecution alleges that, for the purposes with which he was accused, he was entrusted with this mission. The witness will say that Papen accepted the mission only after a clear guarantee concerning the purposes.

Furthermore, Count Kageneck was in Vienna after 1935; that is to say, from 1935 until the Anschluss, and about this time we would not have any other witness.

Kageneck can also give reasons for an important point. That is, that he was encrusted to take diplomatic papers into Switzerland and bring them into security, because from these papers, the proof for the activity of the Defendant in Vienna could be seen.

Therefore, in my opinion, the witness Kageneck cannot be left out.

If we can leave out a witness, that would be witness Number Four, for whom I would be asked to be permitted to use an interrogatory, because questions are asked which the other witnesses could not answer.

Witness Number Five, Minister Kroll. Papen is accused of a conspiracy for aggressive war. The Prosecution has not limited the Indictment in time.

H0078 - 0007



The largest part of the time in question, 1938 to 1944, Papen was in a position in which for an activity to disturb the peace, he would have been very well qualified. Turkey was for a long time an important pillar in military, and therefore, political, considerations. It is, therefore, of the greatest interest whether Papen has used his position for any activity in the sense of the conspiracy.

Moreover, I should like to bring proof for the fact that his activity was directed to preserving the peace and that he has objected to any extension of the war by military measures against Russia and against every political measure for the destruction of good relations with Turkey and between Turkey and the Allied Powers.

The witness was, during the Turkish time, the first collaborator of the Defendant. He is, therefore, in a position to give us information about the entire time.

Baroness do Nothomb. I have asked in this case to be permitted to use an affidavit or interrogatory.

THE PRESIDENT: Which number are you dealing with?

DR. KUBUSCHOK: Number Eleven.

THE PRESIDENT: You are not dealing with Six to Ten?

DR. KUBUSCHOK: No, we are in agreement about Six to Ten.

THE PRESIDENT: Very well, Eleven.

DR. KUBUSCHOK: Number Eleven, Baroness de Nothomb.

H0078 - 0008

In this case I will ask for an interrogatory or for approval to submit an affidavit. The subject of the evidence is: The subject of the evidence is: The defendant has during the years 1940 to 1944 continuously intervened for people who in their turn intervened for members of the resistance movement. I want to prove that the defendant von Papen shows again in this case that he was greatly interested to assist in pacifying the German-French relations, and that during the war he had in mind the time after the war to take the poison out of the relations. The intervention of the defendant was done on behalf of the condemned people, which information for the judging of the defendant is important.

No. 12, Archbishop Dr. Groeber. The Prosecution asserts that the defendant von Papen had used his position as a prominent German Catholic for a dirty maneuver of deception and that the conclusion of the Concordat as such was effected in the course of a policy directed against the church; that is, the conclusion of the Concordat was not taken seriously as could be seen by later violations of the Concordat. Archbishop Dr. Groeber was at the time of negotiations concerning the Concordat with the Holy See. He was present during all the negotiating. He knows that the initiative to start negotiations came from von Papen, who got approval from Hitler only later. He knows that the first draft which had been made by von Papen for the Concordat was disapproved by Hitler, and that only after long struggles, Papen could get approval for this draft. The witness knows the defendant von Papen very well. He also knows from which inner attitude to the Catholic question the defendant has approached the matter of the Concordat. He is in aposition also to describe the consequences of the Concordat being a hiding material of the church in Germany. He is in a position to judge that the contents of the Concordat at a later time would have been protection for church interests from the knowledge of the personal conditions of the defendant and the entire conditions of the church in Germany. He was in a position to give us information as to whether the defendant agreed or had anything to do with the violations against the Concordat.

THE PRESIDENT: Dr. Kubuschok, does witness No. 2 deal with the same subject? Where you say in your discussion of the subject of the evidence,

H0078 - 0009

does that witness No. 2 accompany the defendant to Rome to conclude the Concordat, and can he testify that against Hitler's strong opposition he succeeded at the last minute in concluding the Concordat? At that time the witness was present at all the speeches.

DR. KUBUSCHOK: The witness Tschirschky was introduced into the negotiations about the Concordat by the defendat. It is very important in my opinion also to examine a witness who was present at the negotiations from the other side. In particular, this witness, Archbishop Dr. Groeber, could also tell something about the later consequences. He can describe the entire situation from the point of the church better than the Private Sedretary Tschirschky. He was also in a position to get a much better impression about the religious personality of the defendant von Papen, which in this case was closely connected with his political activities. I have been very modest in my requests so far, but I should like to ask in this case to grant an interrogatory or an affidavit by Archbishop Dr. Groeber because it should be clear that the accusation that a prominent German-Catholic would have used his position for the dirty maneuvers is a very serious one, and my client is greatly interested to have this question clarified.

Witness No. 13, concerning an affidavit of von Bealiau, which shall show that the defendant in his position in a large and prominent German organization intervened until very late for non-Arian members in the sense of the terminology at that time. Everything which for the judgment indicates Papen is important is to be found on a rather subjective sphere. We will see very fewactions in the case of Papen. The accusations mostly say that he was present. It is, therefore, considerably difficult to bring proof, and this evidence must be rather subjective. To judge a persons' character in its entirety, it is not unimportant how, for instance, in 1938 his attitude was in the question of the Jews, because if Papen here had definitely separated himself from the general line followed by Hitler and the Nazis, we should be able to draw a conclusion as to whether he was really the faithful follower of Hitler which the accusations try to picture him.

Witness No. 14. I have received the statement today. I did not

H0078-0010



have time to look it through. I shall either submit the statement or an affidavit which I will try to get.

No. 15, a questioning of His Majesty King Gustav of Sweden. In whatever way it may be done, this is a very important question. It will touch a major point of the defanse; that is to say, how far it was possible for anybody who was not engulfed in the ideas of Nazism, how far could he collaborate to such an extent; how far could he hope that by his personal activity things could be changed or at least modified? If, on the basis of the subject evidence, we are trying to prove that Papen hadnot only within Germany exhausted his means to serve these purposes, but if, moreover, he has used his foreign political connections for this purpose, then I believe this will supplement the picture in an important way about the character of the defendant. This is such a strong activity in the interest of peace that, in my opinion, from such endeavors alone the absolute falsehood of the accusations could be found that the defendant at any time served the purposes and aims of an active policy for conspiracy and aggression.

H0078-0011

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the documents, Numbers 1 to 8, the Prosecution asks Dr. Kubuschok to submit the extracts, and then we can consider the relevancy at that time. I think that Dr. Kubuschok has Number 9.

DR. KUBUSCHOK: I have only the photostat in my possession, which I have received from the Prosecution.

SIR DAVID MAXWELL-FYFE: I am sorry. I should have said he had a photostatic copy, but the Prosecution have served the photostat. The original is not obtainable at present. If it comes into our possession we will let Dr. Kubuschok see it.

The third point is that Dr. Kubuschok says that he may have to make a supplementary application after Herr Von Papen, Jr., returns. That is of course a matter for him and the Tribunal. The prosecution make no objection.

THE PRESIDENT: With reference to 1 to 8, has Dr. Kubuschok got the books?

DR. KUBUSCHOK: Yes.

THE PRESIDENT: Very well. Then he will be prepared to specify what parts of them -- .

DR. KUBUSCHOK: (Interposing) Yes, sir, yes, indeed.

I would like to supplement the list by one point. Yesterday I received from the Prosecution a further report by von Papen to Hitler during his activity in Vienna, similar to Number 9, also a report to Hitler. I have also received it in the form of a photostat. I shall also submit that report.

THE PRESIDENT: I call on counsel for the Defendant Seyss-Inquart.

SIR DAVID MAXWELL-FYFE: May we state our position?

May it please the Tribunal, with regard to this defendant, the position as to the first four witnesses is that they deal with the Austrian part of the case. On the 2nd of December the Tribunal allowed to this defendant a choice of four out of nine. He has chosen Glaise-Horstenau, who was a minister in the Austrian Government; Guido Schmidt, who was the foreign minister at the time of the Schuschnigg-Hitler-Ribbentrop interview; Skubl, who was the police president and State Secretary for Security in

H0078-0012

Vienna; and Reiner, who is a well known Nazi, who was afterwards Gauleiter of Carinthia.

The Prosecution have no objection to these witnesses.

Then we come to the period as to Holland, and the Prosecution have no objection to Wimmer and Schwebel, but they do object to Bolle being called as an oral witness. The position is that he was refused by the Tribunal on the 26th of January. After the refusal, interrogatories were submitted, but these seem to be almost entirely covered by the interrogatories as administered to the witness Von Der Wense, who is the second under the heading of affidavits. I think out of the 20 questions suggested for Bolle, there are only two that are not covered by Von Der Wense, which are Numbers 17 and 18, and two others which seem to deal with very obvious points.

So that is the objection with regard to Bolle, and the Prosecution submit that he would really be cumulative and is unnecessary.

They make no objection to Fischboeck, who speaks as to Jews, financial administration, art treasures and forced labor.

They make no objection to Hirschfeld, who speaks about confiscations and destruction of factories.

So on the oral witnesses the only objection is as to Bolle.

With regard to the affidavits there is no objection--or rather they should be interrogatories. They were all granted by the Tribunal on the 26th of January, and in these circumstances the Prosecution make no objection to them.

THE PRESIDENT: Yes, Dr. Steinbauer.

DR. STEINBAUER (Counsel for Seyss-Inquart): Mr. President, your Honors, my client, Dr. Seyss-Inquart, had at first asked for a large number of witnesses and then at my advice, and according to the desire of the Tribunal, reduced this number considerably.

I asked to call the witness Von Bolle, because in my opinion the objection made by the Prosecution, that this is a cumulative witness, is not quite correct. Bolle was before the occupation director of the Port of Hamburg, and then during all the years of the occupation he was director of the transportation department in Holland.

He is in a position to inform us about the railroad

H0078 - 0013



and shipping strike in October 1944. This chapter of the history of the occupation is extraordinarily important, because out of this strike a halting of traffic resulted which led to an embargo. The Prosecution asserts, moreover, that part of the cause of, as we may call it, the catastrophe of famine in Holland can be based on measures which the Defendant Seyss-Inquart took in October 1944. Just by the examination of this witness Bolle, we shall see that the defendant endeavored to counteract measures by the Wehrmacht, the Army, which of course tried to use the means of transportation for their purposes, that Seyss-Inquart endeavored to remedy this situation or modify it as much as he could.

By an interrogatory this complex of questions could not be treated exhaustively.

I ask you also to realize that we are dealing here with the examination of the administration of a kingdom of nine million and a time of five years. If we read the report submitted by the Dutch delegation, we see alone in the financial consequences that it is alleged a damage, which had been brought about by the administration and by the fact of war and occupation of Holland by Germany, a figure of 25,725,000 Dutch gulders was reached. And considering the difference of price between 1938 and now, we have to add a margin of 175 percent.

We are confronted here with the examination of administrative, legal, financial and economic measures during a period of five years. I believe that this request, the request of the defendant to admit this witness, is quite justified.

Concerning the affidavits, I took the liberty to make two more applications which have not yet been granted. You will find this on the last page, a very short affidavit by the witness Baron Lindhorst-Horman. He was Kommissar of the Province of Groningen, and is expected to be examined about one point. That is the treatment of the so-called hostages and the fact that none of these hostages was actually shot.

In addition to this affidavit, I have also asked to acquire some official proclamations, proclamations by the Higher Police and SS Leader Hauter, about the executions to prove who had done these things. That is, that the point of view of the Defendant is that these regrettable incidents were executed by the police and not by the civil administration.

H0078-0014



I also intend to submit two affidavits which are already in my possession. One of them is an affidavit by a judge, a German Judge, Kammergerichtsrat Rudolf Fritsch. He was in the administration of Seyss-Inquart in Holland. He was the expert for applications for currency. He is able to tell us how Seyss-Inquart handled this important chapter of jurisdiction.

Another affidavit which I have in my possession comes from a Dr. Walter Stricker. It is here mentioned as Document Number 30. Dr. Walter Stricker was a lawyer in Vienna, and then in 1938 he emigrated to Australia. He served in the Australian Army, and without my asking he sent me an affidavit, notarized affidavit by an Australian Notary Public, in which he testifies about conditions in Vienna in the critical days of October and November of 1938. I ask you to approve also this affidavit.

H0078-0015



As to the documents, and as I have toldSir David --

THE PRESIDENT: One moment, before you deal with that! Sir David said that with reference to the affidavits, which are mentioned on page 2, that these ought to be called "interrogatories." I don't know whether you wish to ask particularly for affidavits which are apropos to interrogatories.

DR. STEINBAUER: Yes, sir.

THE PRESIDENT: You want affidavits?

DR. STEINBAUER: Interrogatories, sir.

THE PRESIDENT: Would there be any objection to the affidavit from the lawyer in Australia being shown to the prosecution, so that they may see whether they wish to put cross-interrogatories to that witness. Australia is too far away from here for himto be brought here for cross-examination.

DR. STEINBAUER: Agreed.

SIR DAVID MAXWELL-FYFE: I have just been handed that affidavit from the witness Stricker and also No. 6, on the Dutch questions, from Judge Fritsch, (?) and if the same course could be taken with regard to that from Baron Lindhorshormer (?), I shall be grateful. then, to consider that, too.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: With regards to the rest of the documents in the usual course, I ask that the defense will make extracts and show them to us.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: There is one point I call attention to the Tribunal. It may be helpful that No. 28, 3571, that is already in as U.S. Exhibit 112. I don't know if the defense really wants No. 3. I shan't deal with it nowbut the prosecution will submit that. It is really unnecessary and irrelevant but I think that is a matter that we can more conveniently discuss when it comes up.

THE PRESIDENT: Yes; then with reference to No. 2, under the heading concerning the Dutch question, will it be satisfactory if that is in the form of an affidavit and is submitted to you, so that you can put cross-interrogatories if you want to?

H0078 -0016

SIR DAVID MAXWELL- FYFE: That would be very satisfactory.

THE PRESIDENT: Dr. Steinbauer, have you got the affidavit mentioned in paragraph 2 of the last heading?

DR. STEINBAUER: No, sir. I did not receive them yet. I have just made the application that the Tribunal, that I ask --

THE PRESIDENT: Could the interrogatories be in a more convenient form?

DR. STEINBAUER: Yes, sir.

THE PRESIDENT: Then we needn't trouble you further about the documents

DR. STEINBAUER: I have only one request, if possible, about the two books which are not in my possession. That is document No. 8, "Guido Zernatto: The Truth about Austria;" and No. 9, the book "A Pact with Hitler "The Austrian Drama," by Martin Fochs."(?) To get these books, I was told by Austrian people that these books contain an important clarification of the incidents, of the events in 1936 and 1938. Both books were, of course, prohibited in Austria during the Nazi regime and, therefore, I cannot get them.

The second book is also on the list, also presented by the French prosecution, and from there I know that the book appeared in the edition in the publishing firm of Plon in Paris. Maybe it is possible, with the aid and assistance of the prosecution, for us to get these books in time. I have all other documents in my possession.

THE PRESIDENT: Did you say No. 2. You said 8 and 9 but did you also say No. 2?

H0078 - 0017



DR. STEINBAUER: No. 2, "3 Times Austria", by Schuschnigg.

THE PRESIDENT: I thought you mentioned the third book. You said you haven't got No.8 and 9 and I thought you went on to mention a third one.

DR. STEINBAUER: No, sir; only these two books.

THE PRESIDENT: Very well. Then, no doubt, the prosecution will help to get you them.

SIR DAVID MAXWELL-FYFE: We will make inquiries, my Lord, and we will communicate with them.

THE PRESIDENT: Yes. I call on counsel for the Defendant Speer.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, the Defendant Speer has asked for 22 witnesses, who are all to answer in writing. There are no oral witnesses. And he has asked for 41 documents. He also asked that the Court should appoint a panel of experts to interrogate a number of witnesse on what are termed "economic questions." Now, I think it would be general if I summarize in four sentences the points of defense that appear on pages 26 and the following pages of the application, because if the Tribunal have these shortly in mind it will make the consideration of the witnesses more easy.

There are four points. No.1 is to show the responsibility of Speer. The Defendant Speer says that he was not responsible for the mobilization, allocation or treatment of labor.

The second point is to prove that his functions were merely technical and not political.

The third point, to prove his actions to stop the importing of foreign labor and the treatment of concentration camp labor in the armament factories, which were his concern.

The fourth point is his efforts at the end of the war to stop destruction in Germany and so to benefit the Allies and Germany after the war.

Now, on the witnesses, the following are from his own ministry, Nos.1 to 6, 8, 10 and 12. The prosecution submit that nine is rather a large number dealing with the position of the ministry. They are cumulative on many points and we should suggest that if counsel would pick three, that that would cover that part of the case.

H0078 - 0018

Now, the following witnesses, Nos.15 to 21, are designed to show the attitude of the defendant at the end of the war. There are a number of documents on this point, and again the prosecution submit that that number of witnesses could be cut down to two or three.

Now, dealing with the remaining witnesses, No.7, Field Marshal Milch, has already been allowed to defendant Goering, so that point doesn't arise. And No.9, Dr. Malzacher, although not a member of the defendant's ministry, who was in charge of the armaments in the Southeast, would appear to be cumulative as to the members of the ministry.

No.11 is the liaison officer between the ministry and the OKW, and also appears cumulative unless counsel could indicate any special point that escaped the prosecution.

No.13 is really cumulative of No.12, speaking as to a point on which Frau Kempf can speak.

No.14 is the defendant's doctor, to speak as to a period of illness. Again, unless there is some point that the prosecution hasn't appreciated, they would have thought that the defendant and his secretary could speak as to a period of illness.

Finally, No.22, Berner, shortly is designed to inform the Tribunal of Hitler's general views on the situation at the end of April 1945, and would appear to be irrelevant. I think the only point that is made is to show that this had some effect on the radio speech which this defendant wanted to make. These are the views of the prosecution as to the witnesses with regard to the panel of experts and the prosecution respectfully say that these matters of supply and labor and armaments are matters which are very generally familiar now and on which a great deal of evidence has been given and that they are essentially matters which can be dealt with by the Tribunal which will decide other questions of fact. They are not really sufficiently specialist matters to merit the Tribunal setting up a special panel to deal with them. These are the views of the prosecution on the question of witnesses.

THE PRESIDENT: Yes, Dr. Flaeschner.

H0078 - 0019

DR. FLAESCHNER: May I start, Mr. President, with the last point which the prosecutor has mentioned? That is the question whether the case of the Defendant Speer could give reason to have his activity and the area of his activity interpreted by anexpert. The prosecutor is of the opinion that the evidence presented so far is sufficient to inform the Tribunal about the manner of his work, his authority in question which came within the competence of the Defendant Speer or in connection with it. I have to say, however, I regret to say that the description which the prosecution has given about the activities of the Defendant Speer is not correct, that is to say, not complete.

H0078 - 0020



It is very difficult to recognize all the activities of the ministry, which has its base in the administration of the Government or State. In all States at war are the ministries of armament and production which have been created during the war. The fear of task in these ministries has been in order from time to time, and that also applies to the ministry of which the defendant Speer has led.

Not only the ministries of the defendant Speer were concerned with that question, which the prosecution has brought to the notice of the Tribunal, but other authoritieswithin the administration, and confidence within the authorities, overlapped, and sometimes you could not even limit the confidence, so that the solution had to be sound.

Also these are questions of importance for the Tribunal to judge as to how far one ought to make accusations as made by the prosecution, partly concerning the occupation and the work of foreign labor. We have to add that originally in this discomfort, it is only a question that there are points by the defendant Ley, who was there in charge of the labor front, that is, the taking care of labor and the workers, and Ley is not present any more.

In judging the question of the use of foreign labor, or the utilization of foreign labor, it is one of the main accusations concerning one man, as in theaccusations of the prosecution against Speer, which is to be set back and which is to recognized further; that, therefore, I have contended it is purely a technical question, the utilization of foreign labor, which should be testified to by an expert.

The selection, or the appointment of such an expert is not easy, so far as persons are concerned. I had suggested that one of the gentlemen who work in the Economic Branch in Washington could be examined on the question, and should be called as an expert before this Tribunal. As I was told this office does not exist any more, and the persons of whom the defendant Speer had, in turn, the impression of appearing in his interrogations, as well informed, these people are no more here. But there should exist the Allied authorities here who are concerned with the economic questions, and maybe it would be possible to select some one within the circle

H0078-0021

of gentlemen who are working there; of one certain person who could cooperate in these questions, and will assist the Tribunal in clarifying them.

I shall proceed direct on the question of witnesses. I have to correct the wrong impression which may have been formed by the prosecution in this stage of the witnesses 1 to 5 -- no, 1 to 6, 8 and 10 and 12.

THE PRESIDENT: If you are departing now from the question of the panel of experts, this could be a convenient time to break off for recess.

(A recess was taken).

H0078 - 0022

DR. FLAECHSNER: Mr. President, I am now turning to the question of witnesses. I would like to make a general remark before I start.

The testimony to be offered by the witnesses, which I have already offered in writing, is perhaps a little more comprehensive, especially since those witnesses who have the most comprehensive knowledge have been deleted, that is, the former chief of armaments, Lieutenant General Fromm, who for many years was the chief of the central office of the ministry of Speer. Those names which I have included in my list are, in part, men who later were taken into the office. Witness Hupfauer, for instance, who is listed as No. 1, was not called in until the 1st of January, 1945, that is, barely four months' of active functions in this office, and that was as chief of the central office of the Speer ministry. He succeeded the previously mentioned Liebold.

I know that if I mentioned several witnesses who were active in the ministry of Speer the appearance is created that these witnesses may be asked about the same points and may possibly be considered as cumulative, but, in reality, such is not the case. These witnesses were active in the ministry of Speer, but they were not in such a manner as a routine official. They did not function as purely routine officials.

The ministry of Speer was a war measure and was of an entirely different structure from that which would be ordinarily found in a regular ministry. Much of its function was industrial. Many of the functions were handled by industrialists. Rohland was one of these. He is mentioned as witness No. 2, and he was called in for a steel concern. Then, witness No. 4 was called in in a similar capacity. Witness No. 6 was a manufacturer of a textile concern. He was the owner of this concern. Witness No. 9 was the director of a mining concern, and, in addition to this function, they had special functions in the ministry of Speer. Therefore, we can see that they were concerned with just a very small segment, covering only those points with which they had been delegated by Speer, and I cannot agree with the objection of the Prosecution that only two of these gentlemenare to be selected by me.

I do not know just how far each of these gentlemen is informed about the matters upon which I would like to cross examine him. I am not in the fortunate position that the Prosecution is of being able to question my witnesses in advance and to find out just what knowledge they do have. I must

H0078 - 0023

depend and rely on an interrogatory and can only surmise that the questions which I submit to them can be answered by them. If I follow the objection of the Prosecution and select only two or three of these gentlemen, it may very well happen that I would select the wrong people, those who do not know anything, and, therefore, it is impossible for me, utterly impossible for me to say that these witnesses will know about the essential proceedings against Speer and that we are concerned with these labor problems and that the witnesses should make statements in this regard. It is impossible for me to say that I may delete one of these witnesses.

In this list of witnesses, I mention briefly the particulars about which these witnesses are to be heard, and I believe that it is unnecessary for me to make further clarifications or explanations in that regard at this time. I believe my explanations are self-explanatory.

Now I am turning to the question of witness No. 7. This witness has already been granted me, and I do not believe that I need to clarify my attitude on this point further.

As far as witness No. 9 is concerned, Malzacher, the Prosecution has asserted that this witness would be cumulative to witness No. 1, but I beg to disagree with that statement. The vital question which is to be put to this witness is the question as to how the distribution of manpower was made from the department office to the various industries. The second question is just how and in what way the offices of Speer's ministry and industries had the opportunity to influence the distribution of manpower and workers, and this witness is essential in this regard. I have further questions to put to this witness, and I am supposed to put these questions in an interrogatory. These questions are supposed to be concerned with destruction.

I wanted to make my list especially comprehensive, and therefore mentioned only the main points, and I therefore beg respectfully to be granted the summoning of this witness. I use interrogatories only when witnesses could make utterances or statements which are relevant and vital. On the return of an interrogatory to me, if I find that it does not contain essential material, I will, of course, not abuse the time and the energy of the high Tribunal in submitting a question or interrogatory of that sort.

The Prosecution is of the opinion that witnesses 12 and 13 are cumulative,

H0078 - 0024

but I do not agree with that point. As far as the facts upon which the witnesses are to testify, perhaps I uttered myself too briefly.

The Prosecution produced only one document, 3568, which contained an interrogatory that covered the activity of Speer or his membership in the SS. This document did not, according to the Defendant Speer, originate from him, and, therefore, I would like to have the secretary swear witness to this fact that the document did not originate with Speer.

Witness 13 is to testify on an entirely different matter. The Reichsfuehrer SS Himmler had the intention to make an SS man out of Speer and to bring him into his personal staff. Witness Wolff knows of the material which was given by Himmler to be forwarded to Speer, and Wolff should now testify that this document was never forwarded to Speer, and that the alleged SS membership of Speer cannot be discussed.

Then, according to the objection of the Prosecution, this seems to be a minor point, but I have to enter into it, since document 3568-PS was submitted by the Prosecution and used as evidence for their case.

I agree with the Prosecution that questioning of witness No. 22 is not necessary, and I do not insist on it.

As far as the questioning of the other witnesses is concerned, I will use interrogatories as directed.

THE PRESIDENT: May I ask you what you have to say about 14? Surely, the fact that the Defendant was ill in the Spring of 1944 --

H0078-0025

DR. FLAESCHNER: Yes, Mr. President, I did not include this question in the interrogatory but I do not insist on witness fourteen and we may dispense with him.

THE PRESIDENT: Would it, do you think, Sir David, expedite or help the defendant's counsel if he were to be allowed to issue all these interrogatories and then were to consider them with you and see what was then cumulative?

SIR DAVID MAXWELL-FYFE: Yes, I should be quite prepared to do that. They are all witnesses who are giving their evidence in writing so that I shall be quite prepared to --

THE PRESIDENT: Well, the Tribunal will consider that aspect of the matter.

SIR DAVID MAXWELL-FYFE: If the Tribunal saw fit I should be very happy to cooperate.

THE PRESIDENT: Then you can now deal with the documents, Dr. Flaechsner, or Sir David will.

SIR DAVID MAXWELL-FYFE: My Lord, the documents one to eight deal with the defendant Speer being against the importation into Germany of foreign labor and they seem relevant, apart from number one, which seems rather a non sequitur; that the amount used in the armament industry does not seem to have any connection, as we can see, with the prisoner-of-war convention in 1929. And number six, as to the callingup of women in Germany, seems rather remote. But perhaps these matters can be more conveniently dealt with when counsel seeks to introduce the documents.

Numbers nine to thirteen shows the general attitude of the defendant Speer to the treatment of foreign workers and therefore appears relevant. Number fourteen deals with the point on which I think it is desired also to have evidence from the witness Milch.

Numbers fifteen to eighteen are reports showing the hopelessness of the economic situation in Germany from June 1944 onwards. The Prosecution makes no objection at the moment. Of course, all these matters will have to be considered when the document is used and numbers nineteen to forty-one all deal with the efforts of the defendant Speer to prevent destruction of

H0078 - 0026

bridges and railways and water transport undertakings and the like during the last few weeks of the war. They might be relevant on sentence and therefore the Prosecution make no objection.

Perhaps learned counsel will set out the quotations which he wants admitted in that regard. It is not a matter on which the Prosecution have called any contrary evidence and therefore if counsel will indicate what are the matters he wants submitted, it may be that we will be able to agree and shorten the presentation.

With regard to documents thirty-eight to forty-one, these are said to be in the possession of the French delegation. They are not in the possession of the French delegation at the moment but they have asked for them to be sent here.

I think that covers our position as to documents.

DR. FLAECHSNER: I would like to comment, but briefly, on one factor. Document Number One is of value only if the high Tribunal will decide to call in a panel of experts or whether you intend that you should be allowed to designate the persons who would form that panel.

DR. FLAECHSNER: Mr. President, the selection of experts I wish to place in the hands of the Tribunal. I myself would have no possibility of calling in a personality who would qualify in this regard. I am fully cognizant of the fact that in the Department of Economic Warfare there were personalities who could qualify as experts and who have the qualifications and prerequisites and the prior knowledge to judge the questions involved.

THE PRESIDENT: Then supposing that the Tribunal were not to accept your contention as to appointing a panel of experts, there is nobody whom you wish to add to your list of interrogatories?

DR. FLAECHSNER: I believe not, Mr. President.

I have one request. This expert should voice an opinion whether the figures given by Mr. Deuss in his affidavit (2520-PS) whether they are actual figures and this expert should voice his opinion as to whether these statistic. or figures, as given, would stand up under close examination.

In this affidavit, Mr. Deuss stated and showed a mathematical basis as to just how many of the total workers employed in Germany were foreign

H0078 - 0027

workers, how many were armament workers -- correction -- how much foreign labor was employed in armament work.

H0078 - 0028

The method of figuring used by Mr. Deuss is not entirely objective and I have my doubts about these figures. If the High Tribunal would not grant the use of an expert in this matter, I wish to ask for the privilege of submitting certain questions in the form of an interrogatory to Mr. Deuss, and I ask forthis privilege that I may giveMr. Deuss the opportunity to again check his original figures.

The affidavit as given by Mr. Deuss and the statements contained therein have already been considered relevant by the Prosecution at some prior time, and I assume that the objection which is made against the figures and statistics of Mr. Deuss are also such, and I humbly request that I may call Mr. Deuss' attention to those points which in my opinion are not true in an objective light.

THE PRESIDENT: Thank you.

COLONEL POKROVSKY: I beg your pardon since I have not exchanged opinions on the subject with my colleagues and for that reason at the present time I am expressing only the viewpoint of the Soviet delegation on the subject of experts.

I do not think that appointment of a board of experts would be a method of solving the question which is correct in principle. We would object to the solving of the question of the defendant Speer by the experts. We do not consider it right that such a question as the orders issued with regard to the foreign workers by Speer or the confirmation of such orders by Sauckel or the distribution of the foreign workers by the local authorities should be determined by experts. We do not consider it right that the question of the technical distribution needs experts. I can say the same thing with regard to the other points.

We are rather inclined to defend the point of view that all these questions can be solved by the Tribunal itself without the panel of experts. For that reason, the Soviet Prosecution objects to satisfying this request for the board of experts and requests that the Tribunal reject this request.

H0078 - 0029

THE PRESIDENT: I call upon counsel for the defendant von Neurath.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the witnesses of the defendant von Neurath, the Prosecution make no objection to No. 1, Dr. Koepke, who was the director of the Political Division in the Foreign Office.

Then, No. 2, Dr. Gauss, is the witness who has already been granted for the defendant Ribbentrop.

With regard to the third, Dr. Diekhoff, the Tribunal granted this witness on the 19th of December, but the Prosecution, having considered the basis of the present application, respectfully suggests that it might be covered by interrogatories.

DR. VON LUEDINGHAUSEN (Counsel for defendant von Neurath): Mr. President, I agree, and I have already worked out an interrogatory which will be submitted to the General Secretary today, but I wish to reserve the right that if the interrogatory is returned to me, I may still ask for the personal testimony of this witness, but I am satisfied with an interrogatory at this point.

SIR DAVID MAXWELL-FYFE: Much obliged.

As the same view is taken by the Prosecution of No. 4, the witness Pruefer, again it seemed to be largely a historical matter and they suggested an interrogatory. There is no objection to the evidence of the witness being brought before the Court.

DR. VON LUEDINGHAUSEN: This interrogatory has already been submitted to the General Secretary. I did this several weeks ago, and I assume that I will have it returned to me, fully answered, in a reasonable period of time.

SIR DAVID MAXWELL-FYFE: Then, No. 5 is Count Schwerin-Krosigk, who was Finance Minister for a long period of years in the government of the Reich. If the Tribunal would be good enough to look at the application with Dr. von Luedinghausen has put in, he says this witness is most accurately informed about the personality of the defendant, his political viewpoints, as well as the basic thoughts and aims of the policy of peace carried on by the defendant, and his avoidance of all use of force as well as his endeavors

H0078 - 0030

for the maintenance of peace, even after being Foreign Minister, as well as his opinion of National Socialism and about the happenings in the Cabinet session of 30 January 1937.

The Prosecution felt that these matters were really emphasizing points that the defendant would speak to, and it was difficult to see that Count Schwerin-Krosigk was being asked to speak as to any particular point that was initial. Therefore, again they would suggest that an interrogatory would be sufficient for the purpose of the defense.

DR. VON LUEDINGHAUSEN: I do not believe that an interrogatory will serve the same purpose that I wish to accomplish, for several activities of the defendant von Neurath are implicated and this would enable him to clear these matters for us.

Von Neurath is indicted for Fifth Column activity of the Conservative Party, and the fact that this is not true can be asserted by Witness No. 5, Schwerin-Krosigk, and I put special stress on the fact of having this matter cleared up before the High Tribunal so that the High Tribunal may have an exact idea of the chain of events as they took place at that time.

And a further question arises, and the other purpose of his testimony is to show in which way von Neurath, even though he was not Foreign Minister at the time, stepped in to bring about the conference at Munich in September 1938, and to show the extent of his activities, activities which were hailed by the German people.

I put special stress on the summoning of this witness who is present in Nurnberg. He will not have to be brought from another city, you see, but we will bring him as a witness before this High Tribunal.

SIR DAVID MAXWELL-FYFE: I don't desire to say anything more on that point.

Then, Field Marshal von Blomberg is, we understand, ill, and there will be an interrogatory.

H0078 - 0031



THE PRESIDENT: Number seven, Dr. Giudo Schmidt, is the same witness as was dealt with this morning in the case of Seyss-Inquart. He is an Austrian ex-foreign minister. I made no objection in the case of Seyss-Inquart and I make no objection now, of course.

Lord Halifax has been the subject of interrogatories.

DR. LUEDINGHAUSEN: This interrogatory has already been sent to Lord Halifax, as I have been told by the General Secretary.

SIR DAVID MAXWELL-FYFE: Dr. Mastny, who was the Czech ambassador in Berlin came into the case in that the prosecution put in a letter from him describing a visit of Dr. Mastny to the defendant von Neurath. Of course, if there is any issue as to that report, its not being true, then there would be some reason for calling him as a witness; but if it is merely a question of clarifying it I should stress an interrogatory should be sufficient.

DR. LUEDINGHAUSEN: I agree to an interrogatory in this case.

SIR DAVID MAXWELL-FYFE: Then with regard to the next witness, Dr. Stroelin, if the Tribunal would consider that with number twelve, Dr. Wurm, I understand that the Tribunal granted number twelve on the 19th of December as an alternative to Stroelin, and giving the choice between the witness Stroelin and the witness Wurm. Dr. Stroelin is Oberbuergemeister of Stuttgart. I don't know if Dr. Seidl could tell the Tribunal if it is the same Dr. Stroelin he desires in the case of Hess.

. . . . . .

He indicates to me that he is, so the Tribunal might note that point that that witness will also be asked for by Dr. Seidl in the case of Hess, and therefore I should suggest that we might leave that in suspense for the moment. If the Tribunal grant it in the case of Hess of course Dr. von Luedinghausen will automatically have the advantage of this witness; and if he is not granted -- and I don't know whether Dr. Luedinghausen feels strongly about his personal presence -- I am not the court -- I don't feel very strongly on the point myself. Do you want to be heard?

DR. LUEDINGHAUSEN: I quite agree that I should make this decision at this point. Perhaps after we settle the question of having assigned this witness to another defendant already, I would like to at--

THE PRESIDENT: One moment. Which one?

H0078 - 0032



SIR DAVID MAXWELL-FYFE: Number ten, Dr. Stroelin.

THE PRESIDENT: If Dr. Stroelin were granted would you require Dr. Wurm at all, number twelve?

DR. LUEDINGHAUSEN: Mr. President, Dr. Wurm I would not insist on for a personal appearance at Nurnberg. He has already told me that he would give me the information in the form of an affidavit, and I would only request the privilege of submitting these affidavits to the High Tribunal. I do not insist on his personal appearance in the court.

SIR DAVID MAXWELL-FYFE: It is merely accumulative, number ten, but if it is felt that an affidavit would help--it will be along the same lines--I shall not press an objection.

Now, number eleven. The prosecution felt with regard to the witness Zimmermann that he was really speaking as to the contents of the defendant's mind. If I might read the first five lines:

"The witness is in a position to give information about the personality, the character, and the philosophy of the defendant, as well as about the fact that he entered the cabinet only at the express request of the Reich President von Hindenburg, and why he remained in the cabinet after the latter's death was that he was a convinced friend of peace and an opponent of any policy pointing toward force or war, and that because of this reason he turned in his resignation as Reich Foreign Minister soon after the 5th of November 1937, further because of what reasons and motives he declared himself ready to take over the office of Reich Protector of Bohemia and Moravia."

It would appear that these are all matters which Sr. Zimmermann has heard from the defendant. I don't really think it helps the defendant's case any further. The prosecution therefore felt that that witness was irrelevant.

DR. LUEDINGHAUSEN: I request a personal appearance

H0078 - 0033



of this witness for the reason that he has been an old friend of von Neurath for many, many years, and the defendant rather considered him as a father-confessor and told him many, many things, so that this witness has an impression of everything told by von Neurath. This witness is accurately informed about the incidents that took place in the summer of 1932, when von Neurath entered the newly-formed cabinet of von Papen upon the express desire of the then Reich President von Hindenburg. The witness is informed in detail and can testify that the defendant did not wish to accept the call, and that it took severe persuasion on the part of the Reich President von Hindenburg, concerning his patriotic and personal duty, and in that way that was the only way in which the defendant could be persuaded to assume this office. This witness also knows the motives upon which the Reich President considered him obligated to carry them out beyond his death and to remain in office, and in that way to fulfill the wishes of the former Reich President.

He also knows the devastating effect that took place upon von Neurath when in 1937 Hitler, with marshal intent, came to the fore. Witness Zimmermann also knows in every detail the motives which made it possible for von Neurath to assume the office of Reich Protector; and the witness also knows in every detail of all these difficulties confronting the Reich Protector. He also knows the attitude the defendant took toward the problems confronting him in the Reich Protectorate. These comments, as aforementioned, are of decisive value so far as the defendant's case is concerned, and I do not believe that even the affidavit which has been worked out with the greatest care can create the same impression and the same weight as a personal appearance of this witness and for that reason I humbly suggest that this witness be granted me, this witness who has already given me his assurance that he will be glad to come to Nurnberg from Berlin. We will not have to find him; he is a practising lawyer in Berlin at present.

SIR DAVID MAXWELL-FYFE: I don't wish to add to that. That leaves one point, My Lord. The two witnesses, thirteen and fourteen. The first one, Dr. Voelkers, was the chief of the cabinet of defendant von Neurath in Prague. He has not been located. The second, von Holleben, was - -

DR. LUEDINGHAUSEN: This witness is in an internment camp at Neuminster, and I indicated the exact address.

SIR DAVID MAXWELL-FYFE: Then I think the submission of the prosecution is that one of these witnesses is suitable, and that it would be unnecessary to call the second witness if Dr. Volkers is available. That is my point.

DR. LUEDINGHAUSEN: I quite agree, but I would like to know whether the second, von Holleben, will be subject to an interrogatory.

THE PRESIDENT: It is now a quarter to one; we will adjourn until two.

(A recess was taken until 1400 hours.)

H0078 - 0034

H0078 - 0035

Official Transcript of the International Military Tribunal in the Matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 7 March 1946, 1400-1700, Lord Justice Lawrence presiding.

THE PRESIDENT: It appears probable that the Tribunal will finish the applications for witnesses and documents before the end of the sitting today, but they do not propose to go on with the case against the defendant Goering until tomorrow. They will take that case at ten o'clock tomorrow morning.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the documents applied for by the defendant von Neurath, paragraph 1 requires no comment.

Paragraph 2 refers to documents which Dr. Luedinghausen has in his possession. If they are treated in the usual way and extracts are made, I have nothing further to say.

Then we come to documents that are not yet in his possession. Number 1 and number 4 are minutes of the Disarmament Conference in 1932 and in May 1933 respectively. I am afraid I don't know what the difficulty has been in obtaining these documents, and if there is any way in which the prosecution can help, they will.

DR. LUEDINGHAUSEN: Concerning document number 1, I was able to find in the meantime, in one of the documents which referred to the Disarmament Conference, a copy of that which is important for me. That is to say, the resolution about the equality of Germany. If the document which I have asked for is not here in time, I am in a position to produce an excerpt of the text from that German book.

However, that does not apply to point 4, and I would like to be able to get that.

SIR DAVID MAXWELL-FYFE: Number 2 is a request for the interrogation of Karl Hermann Frank.

The ruling of the Tribunal was that only the portions of interrogations of defendants used by the prosecution would be liable to production. If any portions of this interrogation were used by the Soviet prosecution, and I confess--

THE PRESIDENT (Interposing): One moment, please. Sir David, as I understood you, you didn't state our ruling quite accurately.

SIR DAVID MAXWELL-FYFE: I am sorry, My Lord.

THE PRESIDENT: I think our ruling was that if the prosecution put in any part of an interrogation of a defendant, then the defendants would have the opportunity of using any other part of the interrogation, treating the interrogation as one document.

SIR DAVID MAXWELL-FYFE: I am very grateful to Your Lordship. That was the rule so far as defendants are

H0078 - 0037

concerned, but Karl Hermann Frank is not a defendant.

THE PRESIDENT: Oh, I see.

SIR DAVID MAXWELL-FYFE: And any portion that has been used would have appeared in the ordinary way in the document book of whichever delegation had used it. The general interrogation was taken, of course, not only for the purpose of the Czech Government in the trial of Karl Hermann Frank. Therefore, what I suggest is that Dr. Luedinghausen put interrogatories to Karl Hermann Frank on whatever points he wants to raise. The prosecution would have no objection to that.

DR. LUEDINGHAUSEN: Mr. President, may I say the following? These four minutes of the interrogations of Karl Hermann Frank are contained in the document USSR-60, which contains the accusations by the Czech Government; they are mentioned and they are contained in there.

I cannot judge how far these interrogations are important concerning my client von Neurath as Reich Protector, or whether they have to do with a later period. For that reason I have asked to see these protocols.

It is known to me that Karl Hermann Frank has also been questioned about the document concerning a meeting in Prague, about a policy of Germanization of Czechoslovakia; and in connection with this document which has been presented--that is to say, which is contained in the report by General Friederitschie---these protocols are also mentioned.

Now, I know that Frank has made a report to the Reich Protector in which he mentioned all the opinions and proposals which were then developed, and considered them impossible. Therefore, it is important for me to know just what is said in these protocols, which the Czech prosecution has presented. If there is nothing in there, then, of course, I will forego the presentation, but I would have to examine it myself.

It is, therefore, important to me, at least, to see these protocols, and then to take from these protocols whatever is important for me.

THE PRESIDENT: Sir David, would you have any objection to counsel for von Neurath seeing these interrogatories?

SIR DAVID MAXWELL-FYFE: I should have to consult the Czech Government before I could agree, because, frankly, I haven't gone through the parts which we were not concerned with in this case, and I don't know on what subjects the interrogation was based.

THE PRESIDENT: But treating the matter as a matter of principle, if a certain document or a part of a document is used, ought it not to be open to the defendants to use the rest of the document?

SIR DAVID MAXWELL-FYFE: I should have thought it a matter of principle, My Lord, only if there were connected parts. I think that is the general rule that is applied, say, to interrogatories in the English Courts. For example, supposing that one day Karl Hermann Frank was examined about the early days of the protectorate, and then another day he was examined on a specific point at the end of the protectorate. Then I shouldn't have thought that the two things were sufficiently closely connected.

H0078 - 0039

My Lord, I am reminded that there is another point, which Mr. Barrington has just brought to may attention. These interro gatories were the basis of the Czech Government Report. They are not introduced as interrogatories but - so I am told -- as part of the report by the person who drew it. It is not material that we are in a position to introduce as interrogatories. They come in as a Government Report from the Czech Government.

THE TRIBUNAL (Mr. Biddle): If it should develop later that it is relevan to the occasion, could the Prosecution object to that material being introduce

SIR DAVID MAXWELL-FYFE: No. If he can get the material, but the materia is the property of the Czech Government.

MR. BIDDLE: Then your position is really that it is not in your hands, but for the Czech Government to determine it.

SIR DAVID MAXWELL-FYFE: Certainly.

MR. BIDDLE: I see

SIR DAVID MAXWELL-FYFE: The only other document is the Treaty between France and the Soviet Union, in 1935. This document was authorized by the General Secretary on the 29th of January, and if there is any difficulty in getting a copy, I will try to do anything I can to help, subject to the reservation as to objecting to its relevance when I know what use is going to be made of it.

DR. LUEDINGHAUSEN: May I say a few more words? During the very last few days I have received some various inside information -- or intimations -- which seem important to my defense; but I have not had any opportunity of chec ing such information, to find out whether it is really of importance to the c duct of the Defense. May I therefore ask, if this should be the casd and if there should be one or two other witnesses or documents which I could find later, that I should be permitted to make an application supplementary to the list of witnesses and documents I have given today.

THE PRESIDENT: I call upon Counsel for the Defendant Fritzsche.

(Dr. Heinz Fritz came to the lectern.)

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, there are only two witnesses applied for in this case.

H0078 -0040

The first of them is von Schirmeister, who was an official of the late Dr. Goebbels in the Propaganda Ministry. The Prosecution have no objection that witness.

With regard to the second witness, Dr. Otto Kriegk, the applications says that he received his information and instructions from the Defendant Fritzsche and he can speak as to the directive issued to journalists. On the assumption that these were more or less official directives that he gave in the course of duty, again I don't think there can be any objection from the Prosecution. But I don't know what Dr. Fritz would think about interrogatories, or whether he has any strong views about calling Dr. Kriegk on that point. As I understand it, it would be more or less of a synopsis of the directives given, but in view of the very modest proportions of the applications in this case, I don't want to be unreasonable, if there is any special reason for calling Dr. Kriegk.

DR. FRITZ: I have presented a very small list of proof and I would be grateful if the personal appearance of the second witness, Dr. Kriegk were granted, and that for the following reasons: First, the witness von Schirmeister has been named because he can give us information about the internal task which the Defendant Fritzsche had in the Ministry for Propaganda, especially about his relations to Dr. Goebbels. Concerning the daily press conferences which the Defendant Fritzsche held, this first witness, von Schirmeister did not take part in them. However, if is important which directives the Defendant Fritzsche has given to the journalists, specifically the most important German journalists who were assembled daily at the press conferences.

As further reason for my request, that the personal appearance of this witness be granted, I should like to point out that out of the list of documents, One and Two of my list are not yet available to me, so that there are various points which I would like to have covered with quotations from these documents -- which can be done by questioning these two witnesses, the only one I have named.

SIR DAVID MAXWELL-FYFE: I don't press the point of an affidavit. I leave it to the Tribunal.

H0078-0041

With regard to the documents, No. 1 is the broadcasts of the Defendant Fritzsche, and there is obviously no objection from the Prosecution to that.

No. 2 is the archives of the section, "German Express Service." And again we make no objection at this stage. We will perhaps have to consider the reports when we get them.

There is a little trouble about the third group, sworn testimony or letters which contain objective observations of the composers about the acts of the Defendant Fritzsche. If these are official reports or anything or that kind, of course there would be no objection if they were contemporaneous, but the course which the Prosecution respectfully suggests to the Tribunal is that we wait and see these in the document book and then we can consider them and take proper exception when they come up.

DR. FRITZ: I completely and heartily agree to the documents under Point One and Point 2. I have nothing important to say, after the statement Sir David has made.

THE PRESIDENT: It would be convenient to deal with them now.

SIR DAVID MAXWELL FYFE: Perhaps Your Lordship will allow me the indulgence of conferring with my colleagues as we deal with each one, as we go along, in case they have any further views to express.

THE PRESIDENT: Certainly.

I think there are some supplementary applications by Dr. Seidl.

DR. ALFRED SEIDL (Counsel for Defendant Hess): Mr. President and Your Honors: On the 28th of February, 1946, I submitted to the Tribunal a supplementary application for the Defendant Rudolf Hess. The application became necessary for the following reasons: In my first application I mentioned the witness Boehle for a number of subjects, among others for the activity of the German Ausland Institute and for the activity of the VDA. When I made that application to question the witness Boehle I had not had any opportunity to speak to the witness. After the approval by the Tribunal, however, I did so, and I found out that the witness Boehle, although he can make very concrete statements about the Ausland organization, did not have any immediate first-hand information about the activity of the German Ausland Institute and the activity of the VDA.

H0078 - 0042

I therefore ask to approve as further witnesses, first, Dr. Karl Stroelin, former Lord Mayor of Stuttgard, last President of the German Auslandsinstitut. The witness is here in Nurnberg in prison, and it is the same witness who has also been named by the defendant Von Neurath in his case.

SIR DAVID MAXWELL-FYFE: Perhaps it would be convenient, My Lord, if Dr. Seidl would indicate what the final position of these witnesses is. As I understand it, he no longer wants Herr Bohle. Is that right? I am not clear whether this witness is in addition to or in substitution for Herr Bohle.

DR. SEIDL: With regard to the witness Dr. Stroelin, that should be an additional witness. The witness Bohle will still be needed as a witness, but only concerning the matter of the activity of the Ausland Organization, the Organization in Foreign Countries. The witness Stroelin, besides the witness Bohle, who has no first hand information about the Auslandsinstitut, should speak about this latter point.

SIR DAVID MAXWELL-FYFE: If I understand it, that would mean that Dr. Seidl is now asking for Herr Bohle, Herr Stroelin, Dr. Haushofer, and an affidavit, I think it is, from Alfred Hess.

I am not sure that this is not rather an accumulation of witnesses on what is, perhaps, a narrower point than Dr. Seidl realizes, from the point of view of the Prosecution. The Prosecution said that the Foreign Organization was used for promoting fifth column activities, but it was only put in this way: That by using the Foreign Organization there was, first of all, complete record and organization of Party memebers abroad; secondly, the intelligence service of that organization, through the organization, reported on all German officials of every section of the government who came abroad and kept check on them in their work, in addition to German subjects, and by reason of providing that intelligence service, they were ready for use, and in fact were used when there was a question of invasion of the country.

It was not suggested that there were direct orders, for example, to blow up bridges or commit acts of sabotage given direct to the organization, which is a matter of inference from the functioning of the organization that I have

H0078 - 0043

described.

I only do that because it should be helpful to Dr. Seidl to know the case he has to meet. The Prosecution has never proved direct orders for sabotage in this regard.

DR. SEIDL: The Trail Brief has accused Rudolf Hess of the fact that under his leadership, organizations of the National Socialist Party, as well as the Auslandsinstitut and the Volksbund had an activity which was equal to that of a fifth column. It is correct that on the occasion of the presentation of the Prosecution against the Defendant Hess, there were no details showing wherein the Prosecution followed this activity by Hess with relation to the activities of these organizations.

As long, however, as these organizations and the Auslandsinstitut and the Volksbund are accused of any connection with the activities of a fifth column, the Defendant Hess has a reasonable interest to see that first, it is shown what kind of activity these organizations had, second, which orders or directives he had given to these organizations.

The witness Bohle is in a position to make very concrete statements regarding these organizations. The same is necessary about the Auslandsinstitut, where Dr. Stroelin, who is here in Nurnberg at the present time, can make authentic statements, and with regard to the Volksbund fuer das Deutschtum in Ausland, the witness Dr. Haushofer.

I agree, however, with regard to the physical condition of the witness Dr. Haushofer, that only an interrogatory be sent to this witness.

SIR DAVID MAXWELL-FYFE: I have no objection to interrogatories as far as Dr. Haushofer is concerned.

THE PRESIDENT: There is one more you want?

DR. SEIDL: Yes, sir, a third one. Before I come to the third witness, whom I wish to name as an additional witness, I would like to inform the Tribunal that I do not insist on the personal hearing of the witness Ingeborg Sperr, who has already been approved by the Court. Instead of that, I shall submit a short affidavit, which is already in the document book and which I have given to the General Secretary for translation.

In the place of the witness Sperr, I should like to name the witness Alfred Leitgen. Leitgen was for many years, until the flight of Rudolf Hess to England, his adjutant.

H0078 - 0044

I could not apply for this witness any sooner because I found out only now where this witness is. I believe that the examination of this witness---that is, the personal examination of this witness--is so important that one can not forego it.

SIR DAVID MAXWELL-FYFE: The two points on which Dr. Seidl specifies, both seem to be relevant points, and in view of the fact that he is prepared to drop the calling of the secretary, the Prosecution will not take objection to that witness.

THE PRESIDENT: Are there any more applications?

SIR DAVID MAXWELL-FYFE: I wonder if Your Lordship will allow me to say one thing. Dr. Servatius has already had certain conversations with a member of my staff. I think they will prove profitable and helpful on the lines that Your Lordship suggested, and if the Tribunal will be good enough to safeguard Dr. Servatius' rights for a day or two, we hope to have something practical and useful to put before the Tribunal.

THE PRESIDENT: You mean with reference to the organizations?

SIR DAVID MAXWELL-FYFE: No, with reference to the Defendant Sauckel.

THE PRESIDENT: Oh, Yes.

SIR DAVID MAXWELL-FYFE: Your Lordship will remember that you allowed the matter to stand over. We have been working along the lines that Your Lordship suggested, but I am afraid that I have not had time to go into it myself and see the final result.

THE PRESIDENT: I See.

DR. SERVATIUS (Counsel for Defendant Sauckel): In discussing the witnesses I have to make a limiting suggesting, which I will make later. Concerning the documents, I have also made an agreement as to how they should be handled. There are, however, two principal applications which I should like to submit and which have not been mentioned so far, so that a decision may be taken by the Tribunal. The applications are documents 80 and 81.

In document 80 a photostat of an occupation order is presented which

had been given in the town of Oels by the local commander, whereby the native population had to report to be deported, and it can be seen from this order that it is deportation for the purpose of labor.



H0078-0045

H0078 - 0046

I would like to submit this to show that the agreement of the Hague concerning land warfare has been considered obsolete by the Soviet authorities. I should like to apply that the Tribunal should make use of Article 17-A of the Charter and try to get the decision by a local judge as to how far this deportation took place and at the same time I should like to clarify that it is not only the town Oels, but that it was done in a large measure in East Prussia likewise. The population in a large number was deported or transported away to work and, if the information which I have received is correct, part of the population of Koenigsburg is today still in the Ural Mountains. I am not in a position to submit documents about all these things, because of the difficulties of mailing, difficulties to receive information, to receive news, but the Tribunal should be in a position by asking the mayors and other officials to find out that what I have just said is correct.

Under Document 81 I submit an affidavit concerning the town of Saaz in Czechoslovakia. There 10,000 inhabitants were put into a camp and until Christmas, 1945, they have worked without pay. I believe that also is proof for the fact that the regulations of the Hague concerning land warfare is considered to be obsolete.

Furthermore, Documents 90 and 91. These are two small books with affidavits as a substitute for a long case. It would be irrelevant if I would produce one or two of these affirmations concerning conditions in the labor camps. One could object to that as being irrelevant because, with regard to the large number, there is little proof that they are affirmations of that kind. These mass incidents of mass conditions have to be considered in a juridical sense. Therefore, the Charter admits government reports. I am not in a position to ask the government for reports. Therefore I have to try to counteract this by collecting affidavits and by grouping them in a sensible form to submit them to the Tribunal. Therefore, I apply for a presentation of proof which may be new but the same objections are in order

H0078 - 0047

here that one could have against an investigation. An investigation has great weaknesses, especially if it was conducted in a one-sided manner without participation of the other side. In the case of my affirmation and affidavits this danger is greatly reduced because it is hard to find somebody who would sign these affidavits except if he has very serious reasons to do so.
I therefore ask the Tribunal to decide about my application concerning these two documents. That is all I wanted to say at this time and which I shall discuss with the Prosecution.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, I have already intimated the grounds on which the Prosecution object to Documents 80 and81. To test their admissibility the easiest way is to assume that Dr. Servatius has proved the facts alleged and, if that is done, they would not in my submission come within miles of proving that Article 52 had become obsolete, and it is illustrative of the danger which I ventured to point out to the Tribunal on these two arguments on that vague and hypothetical suggestion that it might be some evidence thatArticle 52 had become obsolete.

It is suggested that the Tribunal should try the conducts of the Soviet Union with regard to labor condition and, as I understand, send a commission to collect evidence on that point, and I do not want to repeat the arguments, but the Prosecution most strenuously object to the suggestion and say that nothing has been indicated which provides any basis for it.

With regard to 90 and 91, I really feel that the best method would be Soviet ambulando (?). Let us see the affidavits and get some idea of their contents and the means of knowledge disclosed and then the Prosecution can make submission upon them. At this state I don't want to do anything to exclude them and they will receive the most careful attention by my colleagues and myself when they are brought forward.

THE PRESIDENT: I am told that there are other supplementary applications for the defendant Schacht and for the defendant Keitel. I think there may be some mistake about that.

H0078-0048

Is the defendant Bormann's counsel here?

DR. BERGOLD (Counsel for Defendant Bormann): Yes.

THE PRESIDENT: Are you ready to deal with anything yet?

DR. BERGOLD: No.

THE PRESIDENT: I think the Tribunal made an order that your applications would extend over for some application within the next three weeks. So you are not ready yet? I am told your documents are all here. Is that so?

DR. BERGOLD: Mr. President, my documents are here, as far as I know. However, since I could only construct my information and get it from books myself, I cannot tell the Tribunal whether these will be all my documents. I have asked to speak to the Secretary Mundally (?), and only then I will get the final information. Bormann cannot be found. Therefore, for practical reasons, I should like to present everything at a later date.

THE PRESIDENT: Very well. Then the Tribunal will now -- I am told that there are application from the defendant Keitel, Rosenberg--

DR. BERGOLD: Mr. President, defense counsel for Keitel and Rosenberg are not present at this time. They probably did not expect that their applications could be presented today. Maybe that could be done tomorrow before the beginning of the case Goering.

THE PRESIDENT: Well, the Tribunal will now adjourn.

(The Tribunal adjourned until 8 March 1946 at 1000 hours.)